

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of: )  
 )  
Amendment of the )  
Commission's Rules to Establish )  
Part 27, The Wireless )  
Communications Service ("WCS") )

GN Docket No. 96-228

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**REPLY COMMENTS OF  
MOBILE COMMUNICATIONS TECHNOLOGIES, INC.**

Mobile Communications Technologies, Inc. ("Mtel")<sup>1/</sup>, by its attorneys and pursuant to Section 1.415 of the Commission's Rules, respectively submits its Reply Comments in response to the captioned Notice.<sup>2/</sup>

In its Notice the Commission proposed to establish an entire new service, which service would operate in 2305-2320 and 2345-2360 MHz bands. (Notice, at 2) The Commission proposed to open this service up for use for any fixed, mobile radiolocation services, or satellite digital audio relay services consistent with

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<sup>1/</sup> Mtel and its subsidiaries, including SkyTel Corp. ("SkyTel") and Destineer Corp. ("Destineer"), are Commission licensees providing a wide range of high technology wireless communications services. SkyTel Corp. holds a common carrier nationwide paging license and numerous common carrier non-network paging licenses. Destineer Corp. was awarded a Pioneer's Preference to operate an advanced nationwide wireless network in the narrowband Personal Communication Service ("PCS") and was the high bidder for two other nationwide narrowband PCS authorizations at the Commission's July 25, 1994, auction. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

<sup>2/</sup> Notice of Proposed Rulemaking in GN Docket No. 96-228, 41 Fed. Reg. 59048, November 20, 1996 ("Notice").

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international radio regulations, and to license in the newly allocated spectrum by auction. Id. The Commission's actions in this proceeding were in response to Congressional directives in the Appropriations Act.<sup>3/</sup>

By Mtel's count, at least 50 parties filed comments in the proceeding. By these Reply Comments, Mtel comments only on a handful of critical issues discussed.

## **I. DISCUSSION**

### **A. The Interrelationship between Spectrum Management and Appropriations**

Mtel Makes clear that which is obvious: that the FCC is obligated to respond to Congressional directives, even when those directives may well impact upon the core obligations of the Commission, such as spectrum management. Notwithstanding this, Mtel is constrained to agree with comments presented by Motorola, at p. 5, wherein it expressed frustration that the timetable for this entire proceeding appears to be driven by a desire to record in the 1997 budget revenues to be derived from auction in this spectrum. As Motorola notes, that timetable has had the unfortunate effect of not permitting the equipment industry to provide the underlying technology assessment and R&D that are so vital to assessing the utility of spectrum and to assure that its

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<sup>3/</sup> The Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996) (the "Appropriations Act").

value can be maximized. Id. See also Comments of Industrial Telecommunications Association, at p. 4, where it expressed concern that budgetary issues may have supplanted the overall public interest standard that should govern this and other spectrum allocation decisions. While Motorola's interest appears to lie largely with its status as a equipment vendor, and thus Motorola properly emphasized the lack of any momentum for product development that has transpired today, the significance of the concerns raised by Motorola permeates through the entire auction process.

Rational bidding strategies are difficult enough in today's environment, where prospective bidders are never sure how many competitors will be soon joining their ranks, and how much spectrum will flood the market at any given point and time. But when you add to that the inherent uncertainties involving the use of this spectrum, in view of the lack of any equipment development, it makes it impossible for prospective bidders to bid with the information base that almost always accompanies rational decisions involving investment of the magnitude here at issue. As a result, parties will likely overbid, or underbid, the spectrum. And if such over or underbidding does transpire, questions exist with respect to whether the spectrum will be used to its full potential.

**B. WCS Spectrum Should Be Allocated on an MTA Basis**

In the Notice, the Commission invited comment with respect to the proper geographic scope of the WCS allocation. Mtel agrees with the comments presented by numerous parties that the most

appropriate scope for the WCS assignments should be on a Major Trading Area ("MTA") basis. See, e.g. the Comments of Bell Atlantic Nynex Mobile, Inc. at p. 2; AirTouch Communications, Inc. at p. 6; Personal Communications Industry Association at p. 16; and AT&T Wireless Services, Inc. at p. 2. Moreover, as Pacific Telesis properly noted, MTA license will best serve the Commission's goals of universality, speed of deployment, diversity of services and competitive delivery. Pacific Telesis at p. 2. See also Airtouch, at pp. 8 and 9, where it noted that an MTA boundary would be consistent with what the Commission utilized in the General Wireless Communications Service ("GWCS"). See also Bell Atlantic/Nynex Mobile comments at p. 2 where it was noted that larger market designation would reduce the number of licenses available and preclude certain entities from participating in the auction.

**C. Spectrum Caps Should Apply to the WCS,  
or Be Removed in Their Entirety**

Commenting parties were split on the issue of the applicability of spectrum caps. See e.g. comments of Cook Inlet Region, Inc. and Bell South Mobility, supporting application of the caps and CTIA proposing non-applicability of the spectrum caps to this service. When the Commission adopted the spectrum caps rule it balanced a need to maintain a competitive environment with a disinclination to regulate generally, and needlessly. See, e.g., the Commission's Report and Order in GN Docket No. 90-314, 11 FCC Rcd 7824 (1996). Here the Commission is faced with yet an

additional significant consideration: depending on the nature of the service boundary determinations reached in this proceeding, decisions regarding cap applicability can determine whether the major, best financed wireless players will be able to participate in this proceeding. Mtel simply urges the Commission to apply whatever decision it makes with respect to spectrum caps across the board. That is to say, if the Commission wants to abandon spectrum caps as it applies to broadband wireless spectrum, so to should it abandon the caps as it applies to any other frequency band.

**D. The Commission Should Establish a  
Floor Price Below Which a Spectrum  
Would Not Be Sold at the Auction**

From the inception of its auction program, the Commission has identified certain minimum bids below which spectrum would not be sold. But for the most part, these minimums were truly threshold amounts, and they were elicited as much to have bidding start from a proper place as to enunciate a figure below which spectrum would not be sold. Here, the situation is different, and a more substantive minimum figure is appropriate.

As the driving force behind this entire proceeding is the Commission's desire to respond fully to the mandate included in the Appropriations Act, and as Congress, through the Appropriations Act, has enunciated a view as to the worth of the spectrum, it would seem unwise for the Commission to sell the spectrum at any significant discount to that estimate. For example, whereas a 20% discount may be appropriate in view of the non-precise nature of

budgetary estimates, it would appear that a discount beyond that price level would reflect negatively on WCS, and on other spectrum. More importantly, almost by definition, were the Commission to auction spectrum below some small discount of projected price, it could not be said that the Commission was implementing the will of Congress. Rather than sell spectrum short at this time, if market forces are such that proper revenue amounts cannot be raised, the Commission should announce that spectrum will be re-auctioned at a given future date unless the minimum bid price is achieved. In this way, the government is more likely to recoup the value of the spectrum, and operators existing would be in a better position to estimate the amount of spectrum soon to be auction.

## **II. CONCLUSION**

Mtel respectively urges the Commission to design its allocation for the WCS consistent with the above Reply Comments.

Respectfully submitted,

MOBILE COMMUNICATIONS TECHNOLOGIES,  
INC.

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